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U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Total Number of Pages in This Submission

Application Number	10/642,716
Filing Date	August 18, 2003
First Named Inventor	Stephen G. Kimmet
Art Unit	3634
Examiner Name	David M. Purol
Attorney Docket Number	1-16294

ENCLOSURES *(Check all that apply)*

- [✓] Fee Transmittal Form
  - [✓] Fee Attached
- [ ] Amendment/Reply
  - [ ] After Final
  - [ ] Affidavits/declaration(s)
- [ ] Extension of Time Request
- [ ] Express Abandonment Request
- [ ] Information Disclosure Statement
- [ ] Certified Copy of Priority Document(s)
- [ ] Reply to Missing Parts/ Incomplete Application
  - [ ] Reply to Missing Parts under 37 CFR 1.52 or 1.53
- [ ] Drawing(s)
- [ ] Licensing-related Papers
- [ ] Petition
- [ ] Petition to Convert to a Provisional Application
- [ ] Power of Attorney, Revocation Change of Correspondence Address
- [ ] Terminal Disclaimer
- [ ] Request for Refund
- [ ] CD, Number of CD(s) _____
  - [ ] Landscape Table on CD
- [ ] After Allowance Communication to TC
- [ ] Appeal Communication to Board of Appeals and Interferences
- [✓] Appeal Communication to TC **(Appeal Notice, Brief, Reply Brief)**
- [ ] Proprietary Information
- [ ] Status Letter
- [✓] Other Enclosure(s) (please Identify below):
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Remarks

SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm Name	Marshall & Melhorn, LLC		
Signature	Stephen G. Kimmet		
Printed name	Stephen G. Kimmet		
Date	3-15-2006	Reg. No.	52,488

CERTIFICATE OF TRANSMISSION/MAILING

I hereby certify that this correspondence is being facsimile transmitted to the USPTO or deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on the date shown below:

Signature	Roberta A. Winzeler		
Typed or printed name	Roberta A. Winzeler	Date	March 15, 2006

PTO/SB/17 (01-06)
Approved for use through 07/31/2006. OMB 0651-0032
U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Fees pursuant to the Consolidated Appropriations Act, 2005 (H.R. 4818).

FEE TRANSMITTAL
For FY 2006

☑ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT	($)	250

Complete if Known	
Application Number	10/642,716
Filing Date	August 18, 2003
First Named Inventor	Stephen G. Kimmet
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Art Unit	3634
Attorney Docket No.	1-16294

METHOD OF PAYMENT (check all that apply)

☑ Check ☐ Credit Card ☐ Money Order ☐ None ☐ Other (please identify): _____

☑ Deposit Account Deposit Account Number: 13-1816 Deposit Account Name: MARSHALL & MELHORN, LLC

For the above-identified deposit account, the Director is hereby authorized to: (check all that apply)

☐ Charge fee(s) indicated below ☐ Charge fee(s) indicated below, **except for the filing fee**

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FEE CALCULATION (All the fees below are due upon filing or may be subject to a surcharge.)

1. BASIC FILING, SEARCH, AND EXAMINATION FEES

	FILING FEES		SEARCH FEES		EXAMINATION FEES		
		Small Entity		Small Entity		Small Entity	
Application Type	Fee ($)	Fee ($)	Fee ($)	Fee ($)	Fee ($)	Fee ($)	Fees Paid ($)
Utility	300	150	500	250	200	100	
Design	200	100	100	50	130	65	
Plant	200	100	300	150	160	80	
Reissue	300	150	500	250	600	300	
Provisional	200	100	0	0	0	0	

2. EXCESS CLAIM FEES

Fee Description	Fee ($)	Small Entity Fee ($)
Each claim over 20 (including Reissues)	50	25
Each independent claim over 3 (including Reissues)	200	100
Multiple dependent claims	360	180

Total Claims		Extra Claims		Fee ($)		Fee Paid ($)
_____	- 20 or HP =	_____	x	_____	=	_____

HP = highest number of total claims paid for, if greater than 20.

Indep. Claims		Extra Claims		Fee ($)		Fee Paid ($)
_____	- 3 or HP =	_____	x	_____	=	_____

HP = highest number of independent claims paid for, if greater than 3.

Multiple Dependent Claims	
Fee ($)	Fee Paid ($)
_____	_____

3. APPLICATION SIZE FEE

If the specification and drawings exceed 100 sheets of paper (excluding electronically filed sequence or computer listings under 37 CFR 1.52(e)), the application size fee due is $250 ($125 for small entity) for each additional 50 sheets or fraction thereof. See 35 U.S.C. 41(a)(1)(G) and 37 CFR 1.16(s).

Total Sheets		Extra Sheets		Number of each additional 50 or fraction thereof		Fee ($)		Fee Paid ($)
_____	- 100 =	_____	/ 50 =	_____	(round up to a whole number) x	_____	=	_____

4. OTHER FEE(S)

	Fees Paid ($)
Non-English Specification, $130 fee (no small entity discount)	
Other (e.g., late filing surcharge): Brief on Appeal filing fee	250

SUBMITTED BY

Signature	Stephen Kimmet	Registration No. (Attorney/Agent) 52,488	Telephone 419-249-7132
Name (Print/Type)	Stephen G. Kimmet		Date 3-15-06

#AF

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Mail Stop APPEAL BRIEF PATENTS, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450,
on March 15, 2006

Roberta A. Winzeler
(Name)

Roberta A. Winzeler
(Signature)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES

In re Application of: Stephen G. Kimmet	)	Group Art Unit: 3634
Serial No.: 10/642,716	)	Examiner: David M. Purol
Filing Date: August 18, 2003	)	Attorney Docket: 1-16294
For: FOLDING PANEL ASSEMBLY	)	

March 15, 2006

MAIL STOP APPEAL BRIEF – PATENTS
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

BRIEF ON APPEAL

Honorable Sir:

This brief is in furtherance of the Notice of Appeal, in connection with the above-captioned application, which was mailed on January 12, 2006 and was received by the U.S. Patent and Trademark Office on January 17, 2006.

The fees set forth in 37 CFR 41.20(b)(2) are being submitted herewith.

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1. Real Party in Interest

The real party in interest is Stephen G. Kimmet.

2. Related Appeals and Interferences

There is no known related appeal or interference that will directly affect or be directly affected by, or have a bearing on, the Board's decision in this Appeal.

3. Status of Claims

The status of each of the claims is as follows:

1) Claims canceled: 3

2) Claims withdrawn from consideration but not canceled: None

3) Claims pending: 1, 2, and 4-14

4) Claims allowed: None

5) Claims rejected: 1, 2, and 4-14

The claims on appeal are 1, 2, and 4-14. A copy of the claims on file is submitted in the attached Claims Appendix.

4. Status of Amendments

No amendment was filed subsequent to the final rejection of the application by the Office Action of October 20, 2005.

5. Summary of Claimed Subject Matter

The present invention, as defined in independent claim 1, defines a folding panel assembly 10 that comprises only vertically-oriented frames 16 (see, for example, Fig. 1 and the original Abstract of the parent U.S. Patent Application Serial No. 09/524,339 that is now U.S. Patent No. 6,378,592), wherein first and second vertically-oriented frames 16 (see, for example, page 4, lines 8-11 and page 5, lines 18-20) are disposed on separate spaced apart partitions 16a (see, for example, page 1, lines 23-26), the frames 16 being stationary relative to the partitions 16a and defining an opening 12a and a plurality of folding panels 14 (see, for example, page 2, lines 14-16), wherein a first panel is mounted to the first vertically-oriented frame 16 and each successive panel is supported solely by its preceding panel, the folding panel assembly 10 having an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening 12a (see, for example, Fig. 1) and wherein, when the panels 14 are folded together at the first frame 16, access is allowed through the opening 12a, and when the panels 14 are unfolded to extend across the opening 12a

to the second frame 16, access through the opening 12a is blocked (see, for example, page 2, lines 11-13, page 9, lines 18-20, and the original Abstract).

In another embodiment, as is defined by independent claim 7, the subject invention defines a folding panel assembly 30 that comprises only vertically-oriented frames 36,38 (see, for example, Fig. 2 and the original Abstract), wherein first and second vertically-oriented frames 36,38 (see, for example, page 5, lines 15-20) are disposed on separate spaced apart partitions 40,42 (see, for example, page 1, lines 23-26), the frames defining an opening 12a, a first plurality of folding panels 32 having a first panel supported by the first frame 36 and each successive panel is supported solely by its preceding panel and a second plurality of folding panels 34 having a first panel supported by the second frame 38 and each successive panel is supported solely by its preceding panel (see, for example, page 3, lines 1-6), the folding panel assembly 30 having an absence of any elements that would unite the folding panels 32,34 to horizontal members that would span above and/or below the opening 12a (see, for example, Fig. 2) wherein, when the first and second plurality of panels 32,34 are folded together at the frames 36,38, access is allowed through the opening 12a, and when the first and second plurality of panels 32,34 are unfolded to extend across the opening 12a, each panel having a furthest extended panel coming together, access through the opening 12a is blocked (see, for example, page 2, lines 11-13, page 9, lines 18-20, and the original Abstract).

6. Grounds of Rejection to be Reviewed on Appeal

The issues for appeal are:

a) Claims 5 and 11 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement.

b) Claims 1, 2, 6-9, 12, and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruneau (U.S. Patent No. 4,431,044, hereinafter Bruneau).

c) Claims 4 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruneau in view of Dykes (U.S. Patent No. 5,598,667, hereinafter Dykes).

d) Claim 14 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bruneau in view of Thun et al. (U.S. Patent No. 3,811,489, hereinafter Thun).

7. Argument

a-1) In regard to the rejection of claim 5 under 35 USC 112, first paragraph, as failing to comply with the enablement requirement, the Examiner asserts that these claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner concludes from this that it is not known the structure and the software/hardware interface which comprises the computer controlled display.

The Examiner further asserts that, nevertheless, applicant is not relieved of the requirement to provide a written description of the invention and the manner and process of making it in such terms as to enable any person skilled in the art to make and use the same.

Applicant, however, traverses this rejection by asserting that the structure of the computer controlled display panels of claim 5 is clearly defined in independent claim 1, from which claim 5 depends, and is illustrated in Fig. 1 to be that of a plurality of folding panels, where a first panel is mounted to a first vertically-oriented frame and each successive panel is supported solely by its preceding panel.

In regard to the control of the computer controlled display panels of claim 5, applicant asserts that one skilled in the art of computer display control knows how to make and/or use the claimed computer display panels. In fact, applicant asserts that in the field of computer controlled displays, one skilled in the art of the control of computer displays knows of at least hundreds of ways to provide control for computer controlled displays, because the field of computer controlled displays is a very mature field of art (i.e., going back over 70 years; see, for example, the Evidence Appendix for Exhibit A, which was filed with applicant's amendment dated August 13, 2004 and subsequently entered, thus no new evidence is being presented).

In other words, applicant asserts that it is unnecessary to require hundreds of possible specifications associated with the control of the computer display panel. In fact,

the U.S. Federal Circuit Court decided that "patent law does not require that all possible lengths (taken in the subject application to be all possible computer display software/hardware combinations) corresponding to the spaces in hundreds of different automobiles (taken in the subject application to be the control of hundreds of computer displays) be listed in the patent, let alone that they be listed in the claims" (*Orthokinetics, Inc v. Safety Travel Chairs, Inc.* 806 F.2d 1565 1 USPQ2d 1081 (Fed. Cir. 1986)).

Further, it is applicant's position that applying control to the computer controlled display panels of claim 5 is similar to applying posters and physical items to the folding panels, since the means of applying posters and physical items have been known for many years and there are also literally at least hundreds of ways to apply these items.

For all the reasons described in the preceding paragraphs, applicant respectfully submits that claim 5 meets all of the requirements of 35 U.S.C. § 112, first paragraph.

a-2) In regard to the rejection of claim 11 under 35 USC 112, first paragraph, as failing to comply with the enablement requirement, the Examiner asserts that these claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. The Examiner concludes from this that it is not known the structure and the software/hardware interface which comprises the computer controlled display.

The Examiner further asserts that, nevertheless, applicant is not relieved of the requirement to provide a written description of the invention and the manner and process of making it in such terms as to enable any person skilled in the art to make and use the same.

Applicant, however, traverses this rejection by asserting that the structure of the computer controlled display panels of claim 11 is clearly defined in independent claim 7, from which claim 11 depends, and is illustrated in Fig. 2 to be that of a first plurality of folding panels having a first panel supported by the first frame and each successive panel is supported solely by its preceding panel, and a second plurality of folding panels having a first panel supported by the second frame and each successive panel is supported solely by its preceding panel.

In regard to the control of the computer controlled display panels of claim 11, applicant asserts that one skilled in the art of computer display control knows how to make and/or use the claimed computer display panels. In fact, applicant asserts that in the field of computer controlled displays, one skilled in the art of the control of computer displays, knows of at least hundreds of ways to provide control for computer controlled displays, because the field of computer controlled displays is a very mature field of art (i.e., going back over 70 years), as detailed in the Evidence Appendix.

In other words, applicant asserts that it is unnecessary to require hundreds of possible specifications associated with the control of the computer display panel. In fact, in Orthokinetics, the U.S. Federal Circuit Court decided that "patent law does not require that all possible lengths (taken in the subject application to be all possible computer display software/hardware combinations) corresponding to the spaces in hundreds of different automobiles (taken in the subject application to be the control of hundreds of computer displays) be listed in the patent, let alone that they be listed in the claims."

Further, it is applicant's position that applying control to the computer controlled display panels of claim 11 is similar to applying posters and physical items to the folding panels, since the means of applying posters and physical items have been known for many years and there are literally at least hundreds of ways to apply these items.

For all the reasons described in the preceding paragraphs, applicant respectfully submits that claim 11 meets all the requirements of 35 U.S.C. § 112, first paragraph.

b-1) In regard to the rejection of claims 1, 2, and 6 under 35 U.S.C. 103(a) as being unpatentable over Bruneau, the Examiner asserts that Bruneau discloses the claimed folding panel assembly including a plurality of folding panels 6 hingedly mounted to vertically-oriented frames, first and second locking bars 30,31.

The Examiner further asserts that it is noted that the claims have been amended to recite that the folding panel assembly has an absence of any elements that would unite

the folding panels to horizontal members that would span above and/or below the opening, and that there are only vertically-oriented frames. From this, the Examiner concludes that, however, "it is a well settled issue that to eliminate an element together with its function would have been obvious to one of ordinary skill in the art."

Applicant, however, traverses these rejections and asserts that independent claim 1 and dependent claims 2 and 6, which directly depend from claim 1, include at least the limitations of only vertically-oriented frames, a plurality of folding panels, wherein a first panel is mounted to the first vertically-oriented frame and each successive panel is supported solely by its preceding panel, and the folding panel assembly having an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening.

After studying the Bruneau reference, applicant can find nowhere in Bruneau where at least these limitations (and, therefore, the structure of claims 1, 2, and 6) are taught or suggested. Instead, applicant finds that the Bruneau apparatus requires that each successive panel 6 is not supported solely by its preceeding panel. In fact, applicant finds that each successive panel of Bruneau is supported by horizontal elements (i.e., upper and lower runners 1,2) (see, for example, Fig. 1).

In addition, applicant finds the Bruneau apparatus further requires the upper and lower runners 1,2 to cooperate with horizontal brackets 40,41 that are "situated as close as possible to the lintel and ground in order to resist the insertion of a lever toward the

interior of panel 6" (see, for example, column 6, lines 15-19). These elements 40,41 are contrary to the claimed invention, which specifically claims an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening.

Clearly, the Bruneau patent and the claimed invention are non-analogous art, which finds support in the decision of the CCPA that "the similarities and differences in structure and function of the inventions to carry far greater weight." (*In re Ellis*, 476 F.2d 1370, 1372, 177 USPQ 526, 527 (CCPA 1973)).

Support for the difference in function between Bruneau and the claimed invention is found by comparing the function of the Bruneau patent, which is to be a "forcible entry deterrent" (see, for example, Abstract), and the function of the claimed invention, which is to provide privacy (see, for example, page 2, lines 11-13 and page 9, lines 18-20).

Support for the difference in structure is found by comparing Fig. 1 of Bruneau and Fig. 1 of the subject invention, where it is clear that the claimed invention is not resistant to forced entry. In fact, an assailant would not require a lever to go under or over the claimed invention.

Although the Examiner does not cite any particular court or U.S. Patent and Trademark Office decisions in regard to the Examiner's assertion that "it is a well settled issue that to eliminate an element together with its function would have been obvious to one skilled in the art," applicant finds the MPEP § 2144.04 to cite *Ex parte Wu* (10 USPQ

2031 (Bd. Pat. App. & Inter. 1989)), *In re Larson* (340 F.2d 965, 144 USPQ 347 (CCPA 1965)), and *In re Kuhle* (526 F.2d 553, 188 USPQ 7 (CCPA 1975)).

In Wu, applicant finds that a "primary reference" was cited that was missing an element and the element's associated function from that of Wu. Then, a "secondary reference" was combined with the primary reference, where the secondary reference had the missing element and an associated function that resulted in the claimed inventions of Wu.

However, for the subject claimed invention, the Examiner relies only on Bruneau (primary reference) that has added horizontal elements of the upper and lower runners 1,2 that cooperate with horizontal brackets 40,41 (this may be an error in Bruneau, possibly 10,11), which provide a different function – deterrence of forced entry. The Examiner does not cite any secondary reference! Further, applicant can find no suggestion or motivation in Bruneau to provide for the function of privacy!

Applicant finds that in Larson, a "primary reference" had an additional element (i.e., additional framework structure) and its function (i.e., additional carrying capacity) that were eliminated in Larson. Even with the missing additional element and its function, the function of Larson and the primary reference was still that of fluid carrying.

However, the function of the subject claimed invention (i.e., privacy) and the function of Bruneau (i.e., deterrence of forced entry) are different functions! Again,

applicant can find no suggestion or motivation in Bruneau to provide for the function of privacy!

Applicant finds that in Kuhle, Kuhle was missing a switch member and the function of the switch member from a primary reference. However, even without the switch member the claimed invention of Kuhle still possessed the function of the primary reference, that of measuring the moisture in soil.

In the subject claimed invention, however, the Examiner relies only on Bruneau that has the added horizontal elements of the upper and lower runners 1,2 that cooperate with horizontal brackets 40,41, which provide a different function – deterrence of forced entry. The Examiner does not cite any secondary reference! Applicant can find no suggestion or motivation in Bruneau to provide for the function of privacy!

Therefore, applicant respectfully submits that claims 1, 2, and 6 of the claimed invention are patentable over Bruneau, as the inventions defined thereby are not suggested within Bruneau, nor is there any suggestion or motivation to modify this reference's teachings in order to teach or suggest the claimed limitations, as required by 35 U.S.C. § 103.

Consequently, applicant respectfully submits that claims 1, 2, and 6 should be allowed over Bruneau.

b-2) In regard to the rejection of claims 7-9, 12, and 13 under 35 U.S.C. 103(a) as being unpatentable over Bruneau, the Examiner asserts that Bruneau discloses the claimed folding panel assembly including a plurality of folding panels 6 hingedly mounted to vertically-oriented frames, first and second locking bars 30,31.

The Examiner further asserts that it is noted that the claims have been amended to recite that the folding panel assembly has an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening, and that there are only vertically-oriented frames. From this, the Examiner concludes that, however, "it is a well settled issue that to eliminate an element together with its function would have been obvious to one of ordinary skill in the art."

Applicant, however, traverses these rejections and asserts that independent claim 7 and dependent claims 8-9, 12, and 13, which directly depend from claim 7, include at least the limitations of only vertically-oriented frames, a first plurality of folding panels having a first panel that is supported by a first vertically-oriented frame and each successive panel is supported solely by its preceding panel, and a second plurality of folding panels having a first panel that is supported by a second vertically-oriented frame and each successive panel is supported solely by its preceding panel, where the folding panel assembly has an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening.

After studying the Bruneau reference, applicant can find nowhere in Bruneau where at least these limitations (and, therefore, the structure of claims 7-9, 12, and 13) are taught or suggested. Instead, applicant finds that the Bruneau apparatus requires that "each successive panel 6 is not supported solely by its preceeding panel". In fact, applicant finds that each successive panel of Bruneau is supported by horizontal elements (i.e., upper and lower runners 1,2) (see, for example, Fig. 1).

Further, claims 7-9, 12, and 13 require at least the limitations of a first plurality of folding panels and a second plurality of folding panels, where each plurality of folding panels has a first panel that is supported by a second vertically-oriented frame and each successive panel is supported solely by its preceding panel. The Examiner asserts that Bruneau states and illustrates in Bruneau's Fig. 1 that the "shutter comprises two series of panels articulated with respect to each other."

Upon examination of Bruneau's Fig. 1, applicant finds the left side of Bruneau's Fig. 1 to have "only one panel 6. " Thus, the Bruneau patent does not satisfy the claimed limitation of each successive panel supported solely by its preceding panel. Even if Bruneau did have more than one panel 6 on the left side of Fig. 1, applicant is not able to determine if such panels would possess the these limitations of claims 7-9, 12, and 13, since Bruneau does not illustrate the cooperation between any panels on the left side.

In addition, applicant finds the Bruneau apparatus further requires the upper and lower runners 1,2 to cooperate with horizontal brackets 40,41 (possibly 10,11) that are

"situated as close as possible to the lintel and ground in order to resist the insertion of a lever toward the interior of panel 6" (see, for example, column 6, lines 15-19). These elements 40,41 (possibly 10,11) are contrary to the claimed invention, which specifically claims an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening.

Clearly, the Bruneau patent and the claimed invention are non-analogous art, which finds support in the decision of the CCPA that "the similarities and differences in structure and function of the inventions to carry far greater weight". (*In re Ellis*).

Support for the difference in function between Bruneau and the claimed invention is found by comparing the function of the Bruneau patent, which is to be a "forcible entry deterrent" (see, for example, Abstract), and the function of the claimed invention, which is to provide privacy (see, for example, page 2, lines 11-13 and page 9, lines 18-20).

Support for the difference in structure is found by viewing Fig. 1 of the subject invention, where it is clear that the claimed invention is not resistant to forced entry. In fact, an assailant would not require a lever to go under or over the claimed invention.

Although the Examiner does not cite any particular court or U.S. Patent and Trademark Office decisions in regard to the Examiner's assertion that "it is a well settled issue that to eliminate an element together with its function would have been obvious to one skilled in the art," applicant finds *Ex parte Wu*, *In re Larson*, and *In re Kuhle*.

As discussed above with regard to Wu, Larson, and Kuhle, these decisions do not appear to apply to the claimed invention with regard to Bruneau. Thus, as also discussed above, applicant finds the function of Bruneau (i.e., deterrence of forced entry) to be different than the function of privacy in the claimed invention, and applicant can find no suggestion or motivation in Bruneau to provide for the function of privacy!

Therefore, applicant respectfully submits that claims 7-9, 12, and 13 of the claimed invention are patentable over Bruneau, as the inventions defined thereby are not suggested within Bruneau, nor is there any suggestion or motivation to modify this reference's teachings in order to teach or suggest the claimed limitations, as required by 35 U.S.C. § 103.

Consequently, applicant respectfully submits that claims 7-9, 12, and 13 should be allowed over Bruneau.

c) In regard to the rejection of claims 4 and 10 under 35 U.S.C. 103(a) as being unpatentable over Bruneau in view of Dykes, the Examiner concedes that Bruneau does not set forth a decorative or descriptive panel. However, Dykes is said to disclose a folding panel assembly comprising decorative or descriptive panels 30a-d, wherein, to incorporate this teaching into the folding panel assembly of Bruneau for the purpose of aesthetics, would have been obvious to one of ordinary skill in the art.

Applicant traverses these rejections and asserts that since claims 4 and 10, respectively, depend directly from claim 1 and 7, then claims 4 and 10 are patentable, at least on that basis.

In addition, after studying the Dykes patent, applicant cannot find anywhere in Dykes where Dykes overcomes the above-stated shortcomings of the Bruneau structure (see applicant's descriptions of the Bruneau structure in the above Argument sections b-1 and b-2 that are, respectively, in response to the 35 USC 103 rejection of claim 1 and 7), in order to teach or suggest the claimed limitations.

Further, applicant agrees with the Examiner's admission that Bruneau does not teach a decorative or descriptive panel, as is claimed in both claims 4 and 10, let alone removably attached panels that would be disposed on Bruneau's anti-forced entry apparatus.

As in the past, applicant can find nowhere in this 35 U.S.C. § 103(a) rejection of claims 4 and 10 where the Examiner specifically addresses the limitations of claims 4 and 10 that the decorative or descriptive panels are removably attached to the folding panels. After studying the Dykes reference, applicant can find nowhere in Dykes where Dykes teaches removably attached panels. For at least this reason, claims 4 and 10 are patentable over Bruneau in view of Dykes.

In addition, the removability of the decorative and descriptive panels provide a function that neither Bruneau and/or Dykes provides, that is the function to "have logos, advertisements, pictures, "white board" finish, symbols, cork board, pictures of art of all forms, likenesses of celebrities, figures of cars and other entertainment objects and characters" (see, for example, page 6, line 26 to page 7, line 10) so as to "personalize the door" (see, for example, page 8, lines 11-16).

Therefore, claims 4 and 10 of the present application are patentable over Bruneau in view of Dykes, as the inventions defined thereby are not suggested within either Bruneau or Dykes, nor is there any suggestion or motivation to modify or combine these references' teachings (e.g., decorative or descriptive panels removably attached to the folding panels) in order to teach or suggest the claimed limitations, as required by 35 U.S.C. § 103.

Consequently, applicant respectfully submits that claims 4 and 10 should be allowed over Bruneau in view of Dykes.

d) In regard to the rejection of claim 14 under 35 U.S.C. § 103(a) as being unpatentable over Bruneau in view of Thun, the Examiner admits that Bruneau does not set forth the use of a spring. However, Thun is said to disclose a folding panel assembly 20,21 comprising spring 58 biased hinges 29, wherein, to incorporate this teaching into

the folding panel assembly of Bruneau for the purpose of facilitating the movement of the panels, would have been obvious to one of ordinary skill in the art.

Applicant traverses this rejection and asserts that since claim 14 depends indirectly from claim 7, then claim 14 is patentable, at least on that basis.

In addition, after studying the Thun patent, applicant cannot find anywhere in Thun where Thun overcomes the above-stated shortcomings of the Bruneau structure (see applicants' description of the Bruneau structure in the above Argument section b-2 that is in response to the 35 USC 103 rejection of claim 7), in order to teach or suggest the claimed limitations.

As stated above, independent claim 7, from which claim 14 depends, includes at least the limitations of a first plurality of folding panels and a second plurality of folding panels, where each successive panel is supported solely by its preceding panel. Applicant, however, finds that Bruneau illustrates in Fig. 1 only one panel 6 on the left side of Fig. 1. The Examiner fails to address these limitations of claim 14 and applicant finds that neither Bruneau nor Thun include these limitations. Claim 14 is at least patentable over Bruneau in view of Thun on that basis.

In addition, after studying the Thun reference, applicant finds that the spring 58 and biased hinges 29 of Thun are only "disposed between panels 25 and 26," and not between a first panel and a vertical frame as required by claim 13 (i.e., comprising at least one hinge disposed between each of the frames and its respective first panel), from

which claim 14 depends. In the past the Examiner has not addressed these assertions by applicant with any specificity.

Consequently, applicant respectfully submits that claim 14 of the claimed invention should be allowed over Bruneau in view of Thun.

In addition, the Examiner asserts that applicant argues that the Bruneau patent requires a chassis or a fixed frame consisting of an upper runner 1 and a lower runner 2 which are horizontal frame members. The Examiner further asserts that this is not convincing for "omitting the horizontal frame members together with their function would have been readily apparent to the artisan of ordinary skill in the art."

In response to this assertion by the Examiner, applicant refers the Board to the above discussion in regard to Wu, Larson, and Kuhle in Argument section b-2 that deals with Bruneau not having the same function as the claimed invention.

The Examiner further asserts that applicant further states that by removing Bruneau's horizontal members the resulting panel assembly does not satisfy Bruneau's requirement to prevent forcible entry. The Examiner continues by asserting that "this argument only further substantiates the Examiner's position that to eliminate an element (the horizontal members) together with their function (the prevention of forcible entry) is the expected result."

Although the Examiner has not cited any case law to support these assertions, it appears to applicant that the Examiner may be improperly applying case law to the

claimed invention. Specifically, applicant finds the example of *In re Edge* that is cited in the MPEP § 2144.04 II-B (i.e., "Elimination of an Element and its Function") to be the opposite of the Examiner's assertion. In Edge, the CCPA decided that the omission of an element by Edge (i.e., applicant), with retention of the cited art's element function, was an indicia of unobviousness over the cited art.

In the claimed invention the function of providing privacy is different than that of the cited art (i.e., Bruneau), thus Bruneau is not analogous art to begin with. Therefore, whether there is an omission of an element(s) in the claimed invention (i.e., only vertically-oriented frames and an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening), when compared to Bruneau (who requires horizontally-oriented frames and elements that unite the folding panels to horizontal members), applicant finds the Examiner's assertions to be non-applicable.

CONCLUSION

For the foregoing reasons, it is submitted that the claims on appeal each define subject matter which is novel and would not have been obvious to one of ordinary skill in the art at the time the invention was made. Accordingly, all of the claims on appeal are believed to be entitled to allowance, and a favorable decision to that end is courteously solicited.

Respectfully submitted,

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CLAIMS APPENDIX

1. A folding panel assembly, comprising:

only vertically-oriented frames, wherein first and second vertically-oriented frames are disposed on separate spaced apart partitions, the frames being stationary relative to the partitions and defining an opening; and

a plurality of folding panels, wherein a first panel is mounted to the first vertically-oriented frame and each successive panel is supported solely by its preceding panel;

the folding panel assembly having an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening;

wherein, when the panels are folded together at the first frame, access is allowed through the opening, and when the panels are unfolded to extend across the opening to the second frame, access through the opening is blocked.

2. The assembly of claim 1, wherein the furthest extended panel of the plurality of folding panels is capable of being connected to the second frame when the panels are unfolded across the opening.

3. (Canceled)

4. The assembly of claim 1, further comprising a decorative or descriptive panel removably attached to the folding panels for changing an appearance of the panels.

5. The assembly of claim 1, wherein the panels comprise a computer controlled display.

6. The assembly of claim 1, wherein the panels are opaque, translucent, or transparent.

7. A folding panel assembly, comprising:

only vertically-oriented frames, wherein first and second vertically-oriented frames are disposed on separate spaced apart partitions, the frames defining an opening;

a first plurality of folding panels having a first panel supported by the first frame and each successive panel is supported solely by its preceding panel; and

a second plurality of folding panels having a first panel supported by the second frame and each successive panel is supported solely by its preceding panel;

the folding panel assembly having an absence of any elements that would unite the folding panels to horizontal members that would span above and/or below the opening;

wherein, when the first and second plurality of panels are folded together at the frames, access is allowed through the opening, and when the first and second plurality of panels are unfolded to extend across the opening, each panel having a furthest extended panel coming together, access through the opening is blocked.

8. The assembly of claim 7, wherein the folding panels are capable of being locked together when the panels are unfolded across the opening.

9. The assembly of claim 7, further comprising a first and second locking bars that allow the respective folding panels to stay unfolded.

10. The assembly of claim 7, further comprising decorative or descriptive panels removably attached to the panels for changing an appearance of the panels.

11. The assembly of claim 7, wherein the panels comprise a computer controlled display.

12. The assembly of claim 7, wherein the panels are opaque, translucent, or transparent.

13. The assembly of claim 7, further comprising at least one hinge disposed between each of the frames and its respective first panel to support and pivotally mount its respective plurality of folding panels.

14. The assembly of claim 13, wherein the hinge includes a spring.

EVIDENCE APPENDIX

Brief on Appeal
Serial No.: 10/642,716
Date of Brief on Appeal March 17, 2006

EXHIBIT A

Evidence Appendix

Electron luminescence (EL), which was first discovered by Dr. Destria in 1936, has sixty-year history. Due to the recent development of solid-state chemistry and pellicle semiconductor technology, EL Flat Panel Display was thought much gradually. According to the luminescent material, EL has two types, one is organic and the other is inorganic, and the latter was mainly researched in the past. Now, after the operating life-span has been broken through, organic EL has the value to be industrialized. EL can be used in all kinds of OA machines such as the word-processor and personal computer, and the navigating terminal for vehicles as well. In addition, the full-color EL display has reached the level of practicality, in the near future, we long for the enhanced high definition full-color EL display.

1. Evolution of Luminescence

Owing to the development of IT, Flat Panel Display (FPD) became the mainstream of the electronic applied products, including all kinds of electric appliances such as televisions, fascias, watches, ad fascias etc. Now there are three kinds of technology about FPD, namely Liquid Crystal Display (LCD), Plasma Display Panel (PDP) and Electron luminescent Display (ELD). LCD has been used a lot in the portable computer because of its low cost and electricity-consumption, but, it still has many defects like bad visual angle, low speed, complex structure, unable to be enlarged and high operating costs etc. However, ELD has many great merits like good visual angle luminescing without heat, flexible screen, shortness and portability, which make i have more potentiality in the future.

Electron luminescence (EL) is a kind of physical phenomenon, which converts electricitic energy to light energy. EL was first discovered in 1936 by the Germany scientist Dr. Destria. He had a Zns stick immerged into mercury electrode t luminesce, but at that time the transparent electrode was not discovered. Until 1951 the discovery of the transparent electrode indirectly made EL become the design of the flat lamp-house. But, there were problems with the luminescent intensity and life of EL, so it still could not be applied practically. In 1974, Inoguchi created the filmy EL structure with double insulative layers, which could solve the problems of intensity and life, so it became the new research field. Table 1 is the developing history of EL Flat Panel Display.

The word, Flat Panel Display, first appeared in 1960s. There are many kinds of FPD now made by Sharp Co. in Japan or Planar systems Co. in US, and the latter is the filial company of Tektronix established in 1983.

Sharp Co. first produced the monochromatic 320' 240 EL display, which was used in the first-generation portable computer. Planar Co. produced panchromatic ACTFEL (AC Driven Thin Filmy EL) 320' 240 dots flat panel display, which aroused much attention of display operators at that time. Now, Planar Systems has commercialized panchromatic EL display, and in 1993 it produced the first prototype of full-color EL display.

EL is a simple and reliable luminescing method with sixty-year history. But, since i concerns complex application of solid-state chemistry and stuff, it was not though much in the past. With the maturation of solid-state technology in recent years, EL display will play the important role of the market in the future.

Table 1-1 shows the developing history of flat panel display.

1936	EL's inventor	G. Destriau
1947	Powder type ACEL	Sylvania
1968	LUMOCEN ZnS doped with the rare-earth flouride	Bell Lab,kahng
1974	Double insulating layer ZnS:Mn ACTFEL panel	Sharp
1978	Samples,600units,1500fL,1500hrs	Sharp
1980	ALE,ZnS:Mn,1000fL,8 lm/w	Lohja
1984	Products,3000Uunits/month (640× 400dots)	Sharp
1985	Multi-colour EL in alkaline-earth Sulfide thin film devices SID'85	S. Tanaka et al.
1986	SrS:Ce,K,memory	H. Kobayashi et al.
1986	Products, (512× 256,640× 240dots) ZnS:Mn	Planar
1986	Products, (640× 240dots) ZnS:Mn	Lohja
1987	Thin-film (edge-lighting) printer	Westinghouse
1987	Organic Thin-film EL devices	Kodak,Tang
1988	Products,ZnS:Mn, 6000Uunits/month,10" (720× 400dots),6.8billion Yen	Sharp
1988	Full-color ACTFEL(320× 240dots)	Plansr
1991	Lohja & Planar joint company to develop full color ACTFEL	Planar et al.
1992	Products,ZnS:Mn,2000units/month	Sharp

1993	Products, the first commercial multi-color (R.G.B.) ACTFEL (640× 480dots) SID'93	Planar Int'l
1993	Reported a prototype full-color ACTFEL (640× 480dots) in VGA format, SID'93	Planar
1994	DC thin film organic ELdevices by evaproation	Yamagata University
1995	Planar systems has permitted a 1995 fiscal year budget of R& D for ACTFEL by United States Display Consortium	Planar

2.**principle**

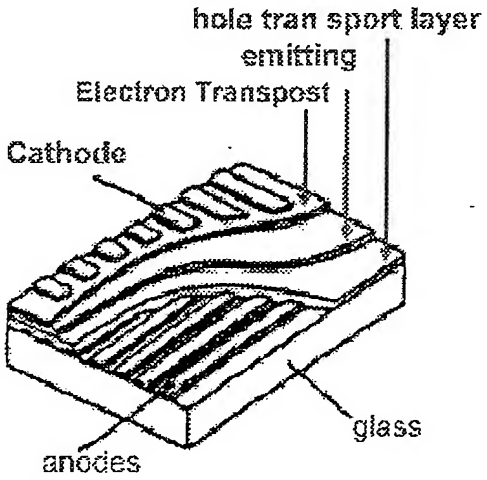

Chart 2-1 ELD Basic structure

Chart2-1 shows the basic structure of Electron luminescent display (ELD), it is mainly made of the electrode material, the insulative material and the luminescent material (the fluorescent material). Usually the fluorescent material can be classified as two kinds: organic and inorganic, the latter is researched more frequently. EL is similar to semiconductor. The fluorescent material is mainly made up of the luminescent center formed by the host and the proper dopant. At present, the developed host material is mostly II - VI family ionic compound, approximately including Ca, Sr, Ba (IIA family) or Zn, Cd, Hg (IIB family) with S, Se (VI family) as the host material. Luminescent color is decided by the dopant, which is mostly transitional metal like Mn, Cu, Ag and lanthanide (Eu, Sm, Tb). Table 2-1 shows the different color formed by the different dopants mixed with ZnS as the host. As luminescence concerns stuffing cation vacancy, and if the dopant is not bivalent metal, we must add something univalent or trivalent to poise the charge. Usually they are halogen like F, Br, Cl, we call them Co-activator.

Table 2-1
Shows the different color formed by the
different dopants mixed with ZnS as the host

材料	在可見光範圍之主要發光波長尖峰（Å）	顏色
PrF_3	6513,6565,4937,5020,7410,6350	白
NdF_3	6000,5400	橙
SmF_3	6490,7080,6015,6100,5650	橙紅
EuF_3	6110,6485,4875,5875	粉紅
TbF_3	5425,4875	綠
DyF_3	5740,5710,6635,4835	黃白
HoF_3	6575	粉紅
ErF_3	5245,5480,6615,5338,7600	綠
TmF_3	4770,4810,6520,6650	藍
YbF_3	6000	紅
MnF_2	6750	橙紅

Luminescence results from the electron in the outermost layer of the luminescent center's dopant collided by the accelerated electron, leading to electron transference, then the electron of this layer is promoted to the energy phase which can result in the crystallization of the host, forming the free electron, at the same time the ionization happens in the luminescent center, finally the combination of the free electron and the ionized luminescent center releases the energy difference by luminescing.

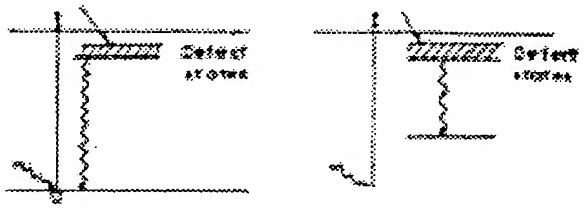

Chart 2-2 ELluminescence preface

The formation of luminescence of EL needs about 10V/cm or above adscititious voltage, this article will explain the relationship among the adscititious voltage, the luminance of EL element and the luminescent efficiency, which is described in chart 2-3. The chart can be divided into three areas, the first one is the area of low voltage (I), the conductive electron cannot inspire the electron in the outermost layer of the luminescent center because of the low adscititious electric field, EL element will not

luminesce. When the adscititious voltage reaches the area of middle voltage(II), the conductive electron is accelerated to be the thermion, which may inspire the luminescent center. EL element will luminesce. At the same time in this area, the energy of thermion will increase due to the increase of voltage, and the luminescent intensity and efficiency will also increase. When the adscititious voltage in the area of high voltage(III), the thermion in the luminescent layer will cause insulative destruction. Although the adscititious voltage increases, the electric field in the luminescent layer will not increase, neither will the energy of the thermion. Therefore, the luminescent intensity and efficiency will hold the line.

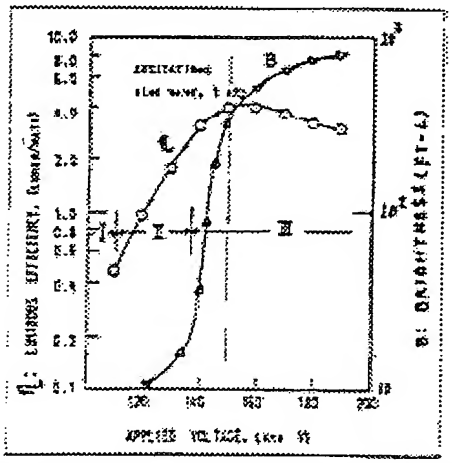

Chart 2-3 The luminance of EL element and the luminescent efficiency

RELATED PROCEEDINGS APPENDIX

None